In Re: Rangaswamy and anr.

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Court : Chennai

Decided On : Dec-08-1967

Reported in : (1969)1MLJ452

Appellant : In Re: Rangaswamy and anr.

Judgement :

A. Alagiriswami, J.

1. The two appellants were tried before the learned Additional Sessions Judge, Coimbatore, for offences under Section 302, Indian Penal Code, and 324, Indian Penal Code, respectively. The first accused was found guilty under Section 304 (Part I) Indian Penal Code and the second accused under Section 324, Indian Penal Code. The first accused was sentenced to undergo rigorous imprisonment for five years and the second accused was sentenced to imprisonment till rising of Court and a fine of Rs. 200 in default to rigorous imprisonment for six weeks.

2. There seems to have been some slight trouble between the parties before the occurrence. But on the day in question accused 1 and 2 and another Arumugham.. were returning from the cinema after witnessing the first show. When they were so returning, the deceased as well as a number of people met them on the way and during the course of that meeting the deceased is said to have caught hold of accused 1's shirt. The deceased also seems to have asked P.Ws. 1 and 2 to catch accused 1 and tie him up. The evidence in this case has been elaborately

considered by the learned trial Judge and though he has also referred to the defence suggestion that the prosecution party went to meet the accused well prepared for that encounter, the learned Judge has neither accepted that suggestion, nor rejected it. As admittedly accused 1 and 2 and Arumugham were returning from the cinema, they could not have expected that the prosecution party would either meet them on the way or try to attack them. They could, certainly, not have been prepared for any attack on them or to attack the prosecution party. There is no doubt, however, that the finding of the learned Sessions Judge, that it was accused 1 that stabbed the deceased, is amply borne out by the evidence. The argument advanced before me in this Court is confined merely to this, that accused 1 cannot be said to have exceeded the right of private defence. It is suggested that the case would come either under clause secondly, or fifthly or clause sixthly of Section 100, Indian Penal Code. The learned Sessions Judge has dealt with this question in this form. He observed as follows:

Therefore, it is clear that A.-1 has stabbed Bhadrappan only after Bhadrappan caught hold of A-1's shirt and asked P.Ws. 1 and 2 to catch A-1 and tie him up. P.W. 3 has stated that the stabbing by A-1 was most sudden and unanticipated. Therefore, there is considerable force in the argument of the defence Counsel that even if the entire prosecution case were to be believed A-1's act would only amount to one done in exercise of a right of private defence or exceeding the right of private defence. A-1 should have legitimately apprehended some harm at the hands of Bhadrappan and his people and it is in such circumstances that he must have inflicted the stab on Bhadrappan. However, A-1's act cannot be entirely covered by the right of self-defence. It is not a case where Bhadrappan or any of his people were armed with deadly weapons which would have put A-1 in instantaneous fear of death or grievous hurt to himself. The act of A-1 therefore would clearly amount to exceeding of the right of private defence. The fact that A-1 has inflicted only a single stab would indicate, that his intention was to free himself from Bhadappan's hold and run away before being caught by P.Ws. 1 and 2. In such circumstances, the act of A-1 cannot amount to murder, but only to culpable homicide not amounting to murder. Hence the act of A-1 would amount to an offence under Section 304 (Part I), Indian Penal Code, and not under Section 302, Indian Penal Code.

3. This, I think, is a very fair characterisation of the facts of this case. Though he has considered only clause firstly and secondly of Section 100, Indian Penal Code, I do not think that the facts would bring the case under clause fifthly or sixthly that section either. Though tying up accused 1 might cause some apprehension in the mind of the first accused, it cannot be said in the circumstance of this case that it was done with the intention of kidnapping or abducting the first accused, nor can it be said that it was with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release. This is because according to the evidence of P.W. 2 given in the Magistrate's Court, Bhadrappan had only asked to tie accused 1 so as to take him to the Police Station. So, I am satisfied that this case would not be covered by Section 100, Indian Penal Code, and it should be held to be a case of the first accused having exceeded his right of private defence. The appellants rely upon the case reported in Viswanath v. State of Uttar Pradesh : [1960]1SCR646 and argue that the case will fall under that section. That was a case which clearly-fell within clause fifthly that is, an assault with the intention of kidnapping or abducting and would not therefore help the appellants. But however, there is one matter which is of considerable importance in this case, as rightly hold by the learned Sessions Judge, accused 1's intention must have only been to free himself from Bhadrappan's hold and run away before being caught by P.Ws. 1 and 2. The attack was only with a penknife, there was no premeditation for the attack on the deceased, and what was given was only a single stab.

Their Lordships in the above mentioned case have remarked as follows:

The appellant gave only one blow with a knife which he happened to have in his pocket. It is unfortunate that the blow landed right into heart and therefore Gopal died. But considering that the appellant had given only one blow with an ordinary knife which, if it had been a little this way or that, could not have been fatal, it cannot be said that he inflicted more harn than was necessary for the purpose of defence. As has been pointed out in Amjad Khan v. The State : 1952 CriLJ648 , these things cannot be weighed in too fine a set of scales or in golden scales.

In this case too if the stab had been a little this way or that, death would not have resulted and at the worst accused 1 would have been guilty only of an offence under Section 324, Indian Penal Code. The position of accused-1, is thus no worse than accused-2's. It is unfortunate that Bhadrappan died. But in the circumstances where the act of accused 1 was merely with the intention of escaping, though technically the matter may fall under Section 304 (Part I), Indian Penal Code, a very mild sentence Would serve the interest of justice in this case. It appears that accused 1 has already served about 10 or 15 days in jail. I consider, therefore, that it would be enough in the interests of justice, if the period of imprisonment is confined to the period already undergone and a fine of Rs. 500 is imposed. In regard to the second accused his conviction under Section 324, Indian Penal Code, is correct. I do not think that a fine of Rs. 200 imposed on him is excessive. The sentence imposed on the first accused will be modified as indicated above and the sentence on the second accused will stand.